

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BRIAN HUDDLESTON,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION No. 4:20CV447
v.	§	
	§	
FEDERAL BUREAU OF	§	
INVESTIGATION and UNITED	§	JUDGE AMOS MAZZANT
STATES DEPARTMENT OF JUSTICE,	§	
	§	
Defendants.	§	

DEFENDANTS' REPLY TO
PLAINTIFF'S OPPOSITION IN RESPONSE TO MOTION TO STAY

Defendants Federal Bureau of Investigation ("FBI") and United States Department of Justice ("DOJ") file this Reply to Plaintiff's Opposition in Response to Motion to Stay [Dkt. 11].

I. INTRODUCTION

Defendants have proposed a reasonable schedule in good faith to provide any responsive, nonexempt records in response to Plaintiff's pending FOIA requests. Plaintiff has responded with an array of irrelevant, speculative and conclusory allegations of bad faith and fraud, rather than to provide any rational basis or statement of hardship in opposition to Defendants' proposed schedule.

II. ARGUMENT

Plaintiff's Opposition alleges that the FBI has acted in bad faith in handling its FOIA obligations by, *inter alia*, comparing the FBI's previous affidavits filed in other

FOIA matters with the current status of this case. [Dkt 11]. Specifically, Plaintiff refers to the Declaration of David M. Hardy [Dkt 11, Exh 5], originally filed in *Clevenger v. U.S. Department of Justice, et al.*, Case No. 1:18CV1568 (E.D.N.Y.), and subsequently filed in *Folkenflik and Edward Butowsky v. Michael Gottlieb, et al*, Case No. 4:19-cv-00180-ALM-KPJ (E.D.Tex.), in which the FBI conducted certain searches, within certain time periods, and located no responsive records to a specific FOIA request. [Exhibit A, Seidel Declaration]. The Hardy declaration is the best reflection of its own contents; it was examined by the E.D.N.Y. Court and was found to be adequate to support a finding of summary judgment for the Government in that action. [Case 1:18-cv-01568-LB, Dkt. 58].

According to the instant Complaint, Plaintiff submitted a FOIA request for records concerning Seth Rich by letter dated April 9, 2020. [Dkt 1, ¶6]. At that time, the FBI's FOIA office (RIDS) was in the midst of a complete shutdown, due to the effects of the COVID-19 pandemic. [Exh A, ¶ 3]. RIDS resumed operations at a diminished capacity on April 29, 2020. [Id]. Plaintiff then filed the Original Complaint on June 1, 2020. [Dkt 1]. The FBI had not yet had an opportunity to send an initial response to the request before the original complaint was filed. [Exh A, ¶ 3].

The FBI, while reviewing information relative to another FOIA request, located a clear and certain lead that indicated additional records may exist in specific FBI files. [Exh A, ¶4]. Accordingly, FBI-RIDS conducted a "text search" of those files using the terms "Seth Rich", "Seth" and "Rich". These searches located the current set of potentially responsive materials. Id]. This potentially responsive material is contained in

only a few “serials”¹ that make brief references to Seth Rich but is voluminous due to the nature of the material (including an image of Seth Rich’s personal laptop). [Id.].

Therefore, the FBI must review thousands of pages of material to determine responsiveness and, as to the responsive material, to make release determinations in accordance with applicable FOIA exemptions. [Id.].

In addition, since December 8, 2020, the FBI is again operating at a reduced capacity due to the effects of the COVID-19 pandemic. [Dkt 10, Exh A]. Furthermore, the FBI is balancing an unprecedented workload, as set forth in detail in the attached declaration of Michael G. Seidel. [Exh. A, ¶¶ 6-12]. The FBI is utilizing its best efforts to complete the search and provide all responsive, nonexempt records to Plaintiff. [Id.].

III. CONCLUSION

Defendants request that this Court grant its Motion to Stay Scheduling Order Deadlines to allow Defendants adequate time to complete the processing of the three pending FOIA requests.

Respectfully submitted,

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¹ A “serial” is a document entry in a file. Within each case file, pertinent documents of interest are “serialized,” or assigned a document number in the order which the document is added to the file, typically in chronological order. A serial can be one page or thousands of pages. [Exh A, ¶4, fn 1].

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2021, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ *Andrea L. Parker*
ANDREA L. PARKER
Assistant United States Attorney